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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1967

JAMES WILLIAMS,

Petitioner

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

SAM ADAM
134 N. LaSalle Street
Chicago, Illinois
CEntral 6-5543

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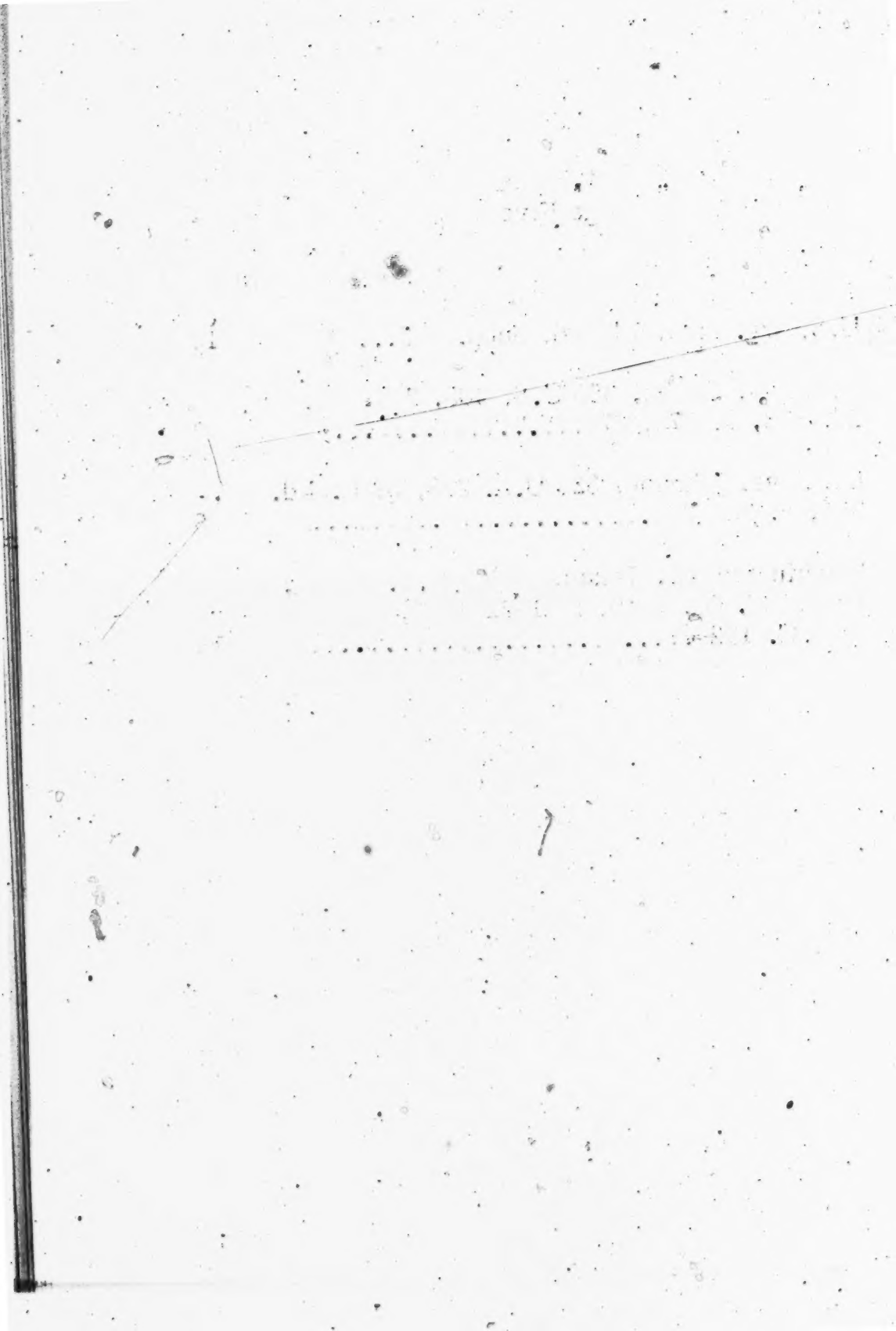

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TO THE HONORABLE, CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

OPINION BELOW

In the Municipal Court of Chicago, First Municipal District of the Circuit Court of Cook County, Illinois, on January 7, 1965, petitioner was found guilty by the court of carrying a dangerous knife, in violation of Chapter 38, Section

24-1 (a) (2), Illinois Revised Statutes "in manner and form as charged in the complaint." (R.43). Judgment was entered on said finding and petitioner was "sentenced to confinement at labor" in the House of Correction at Chicago, Illinois for a period of three months. (R.44). No opinion was rendered by the trial court.

The Appellate Court of Illinois, First District, Second Division, over the dissent of Mr. Justice John J. Lyon, on April 12, 1966 affirmed said judgment and sentence. (R.66). On June 9, 1966, that court denied the Petition for Rehearing, but rendered a supplemental opinion. (R.71). The majority and dissenting opinions and the supplemental opinion on rehearing are reported in 69 Ill. App. 2d. 55, 216 N.E. 2d. 468, and are appended hereto, Appendix 6-16.[1]

On September 22, 1966, petitioner's Petition for leave to Appeal from the aforesaid judgment of the Appellate Court of Illinois, First District, Second Division, which affirmed petitioner's aforesaid judgment and sentence,to the Supreme

---

1. This majority opinion, in the case at bar, states, 216 N.E. 2d. 468, P. 472, "We are aware that this opinion is not in accord with that handed down by another division of this district, People vs. Hill, Gen. No. 50343, 68 Ill. App. 2d. 369, 216 N.E. 2d. 212, filed February 3, 1966, ***". The HILL opinion referred to is attached hereto, Appendix 17-23.

Court of Illinois was granted. (R. 76). On May 18, 1967, the Supreme Court of Illinois in an opinion, (R. 99-101), affirmed said judgment. (R. 102). The opinion of the Supreme Court of Illinois is reported in 229 N. E. 2d. 495, and is appended hereto, Appendix 1-5.

JURISDICTIONAL STATEMENT

The opinion and judgment of the Supreme Court of Illinois, here sought to be reviewed, was rendered on May 18, 1967. The Petition for Rehearing was denied on September 27, 1967. (R. 110).

This Court's jurisdiction is conferred by Title 28, Section 1257 (3), United States Code.

QUESTIONS PRESENTED

Is not the constitutional right of an accused in a criminal prosecution to be tried in "the State where the said crimes shall have been committed", guaranteed by Article III, Section 2, Clause 3 and the Sixth Amendment to the Constitution of the United States, enforcible and guaranteed against invasion by the State through the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States?

Is not the right to be tried where the offense is committed implicit in the concept of ordered liberty and a requirement of fundamental fairness reflected in and assured by the Due Process Clause of the Fourteenth Amendment?

CONSTITUTIONAL PROVISIONS INVOLVED

UNITED STATES CONSTITUTION

Article III, Section 2, Clause 3:

> "The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by law have directed."

Amendment VI:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the

accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

Amendment XIV:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

ILLINOIS CONSTITUTION

Article 2, Section 9:

"In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation and to have a copy thereof, to meet the witnesses face to face, and to have process to compell the attendance of witnesses in his behalf, and a speedy public trial by an impartial

jury of the county or district in which the offense is alleged to have been committed."

STATEMENT OF THE CASE

The complaint, (R.42), filed in the Municipal Court of Chicago, First Municipal District of the Circuit Court of Cook County, Illinois, on January 7, 1965, alleged that petitioner "on or about January 6, 1965 at 900 S. Winchester, committed the offense of unlawful use of weapon, in that he carried a dangerous knife concealed in his boot with the intent to use the knife unlawfully against another, in violation of Chapter 38, Section 24-182, Illinois Revised Statutes, and against the peace and dignity of the People of the State of Illinois." The complaint did not allege in what State, city, town, village, county, or where the offense was committed. Nor did the complaint allege that the offense was committed within the jurisdiction of the court in which the complaint was filed. Petitioner was found guilty by the court "in manner and form as charged in the complaint," and sentenced to three months imprisonment at labor in the House of Correction at Chicago, Illinois.

The Illinois Supreme Court's opinion states and holds, (R.99-101), (App. 1-5), 229 L. Ed. 2d. 495, 496-497:

"Section 9 of article II of the constitution of Illinois guarantees a defendant the right to be tried in 'the county or district in which the offense is alleged to have been committed.' The only allegation as to the place of the offense in the body of this complaint is that it occurred at '900 S. Winchester.' No city or county is named in the body of the complaint, although the complaint was verified in Cook County and there are other references to that county and its circuit court. ***

* * *

"***we see no reason to refuse to read the caption as part of the complaint. So read, the complaint sufficiently designates the county in which the offense was alleged to have been committed."

ARGUMENT AMPLIFYING THE REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

An accused's constitutional right, provided by Article III, Section 2, Clause 3 and the Sixth Amendment to the Constitution of the United States, to be tried "in the State where the said crimes shall have been committed" is guaranteed

against invasion by the State through the Due Process Clause of the Fourteenth Amendment, and is a right implicit in the concept of ordered liberty, and is required by fundamental fairness reflected in due process.

This Court held in U.S. vs. Johnson, 323 U.S. 273, 89 L. Ed. 236, P. 238-239:

> "Aware of the unfairness and hardship to which trial in an environment alien to the accused exposes him, the framers wrote into the Constitution that 'the trial of all crimes*** shall be held in the State where the said crimes shall have been committed. ***' Article 3, Section 2, Cl. 3. As though to underscore the importance of this safeguard, it was reinforced by the provisions of the Bill of Rights requiring trial 'by an impartial jury of the State and district wherein the crime shall have been committed.' Sixth Amendment. ***'
>
> "***Questions of venue in criminal cases, therefore, are not merely matters of formal legal procedure."

In Johnston vs. U.S., 351 U.S. 215, 100 L. Ed. 1097, P. 1102, this Court held:

> "Article 3 of the Constitution and the Sixth Amendment fixed venue 'in the State' and 'district wherein the crime shall have been

committed'. The venue of trial is thereby predetermined, ***. That place is determined by the acts of the accused that violate a statute. This requirement of venue states the public policy that fixes the situs of the trial in the vicinage of the crime. ***"

This Court held in U.S. vs. Cores, 356 U.S. 405, 2 L. Ed. 2d. 873, P. 875-876, and restated said holding in Platt vs. Minnesota Minning and Manufacturing Co., 376 U.S. 240, 11 L. Ed. 2d. 674, P. 679:

> "The Constitution makes it clear that determination of proper venue in a criminal case requires determination of where the crime was committed. *** The provision for trial in the vicinity of a crime is a safeguard against the unfairness and hardship involved when an accused is prosecuted in a remote place."

In Travis vs. U.S., 364 U.S. 631, 5 L. Ed. 340, P. 343-344, this Court held:

> "We start with the provision of Article 3, Section 2 of the Constitution that criminal trials 'shall be held in the State where the said crimes shall have been committed,' a safeguard reinforced by the command of the Sixth Amendment that the criminal

> trials shall be before an impartial jury of 'the State and district wherein the crime shall have been committed.'*** We therefore begin our inquiry from the premise that questions of venue are more than matters of mere procedure. 'They raise deep issues of public policy***"

This Court stated in Beavers vs. Henkel, 194 U.S. 83, 48 L. Ed. 882, P. 886:

> "The locality in which an offense is alleged to have been committed determines, under the Constitution and laws, the place and court of trial."

We invite this Court's attention to Holdridge vs. U.S., 282 Fed. 2d. 302; U.S. vs. Bink, 74 Fed. Supp. 603; Bratton vs. U.S., 73 Fed. 2d. 795; Moran vs. U.S., 264 Fed. 768; Brightman vs. U.S., 7 Fed. 2d. 532, in which it is held that venue in a criminal case is a matter of constitutional right which forbids an indictment, a trial and a conviction in a criminal case in any State or district except where the crime was committed. And see U.S. vs. Anderson, 328 U.S. 699, 90 L. Ed. 1529, P. 1533.

The complaint in the case at bar did not allege where the offense was committed, or that it was committed within the jurisdiction of the court in which the complaint was filed, or in what State, county, city, town or village the offense was committed. In an identical and companion case, People vs. Hill, 68 Ill. App. 2d. 369, 216 N.E. 2d. 212, (App. 17-23), decided on February 3, 1966, by the Appellate Court of Illinois, Third Division, First District, the same District,which decided the case at bar, but another division thereof, that Court stated, 216 N.E. 2d. 212, P. 214, (App. 18):

> "The complaint is defective in several particulars, some of which go far beyond formal technicalities or niceties of pleadings. The most flagrant defect is that venue is not alleged. The complaint does not say in what city, county or State the offense was committed. A defendant has a constitutional right to be tried in the county in which the offense is alleged to have been committed." (Emphasis ours).

The Supreme Court of Illinois did not meet, answer or decide this constitutional law question in the case at bar, but rather, decided that the complaint's mere recitation that the court in which the complaint was filed was in Cook County, Illinois,

was sufficient, even though the complaint did not allege that the offense occurred within the court's jurisdiction or where the offense occurred. With all due deference and respect to the distinguished Supreme Court of Illinois, the Court's reasoning is spurious. The trial court's identity and location and the situs of an offense are as far removed from one another as east is from west. The fundamental constitutional right and safeguard to be tried where the offense was committed cannot be so ludicrously rejected or so slight handedly circumvented.

This Court has held, (1) that the United States Fourth Amendment constitutional right of privacy is "enforcible against the States through the Due Process Clause of the Fourteenth" Amendment; Mapp vs. Ohio, 367 U.S. 643, 655, 6 L. Ed. 2d. 1081; 1090, 81 S. Ct . 684; Stanford vs. Texas, 379 U.S. 476, 13 L. Ed. 2d. 431; Ker vs. Cal., 374 U.S. 23, 10 L. Ed. 2d. 726; (2) that the United States Sixth Amendment constitutional right of an accused to counsel is obligatory upon the States by the Due Process Clause; Gideon vs. Wainwright, 372 U.S. 335, 9 L. Ed. 2d. 799, 83 S.C. 792; (3), that the United States Sixth Amendment constitutional right of an accused "to be confronted with the witnesses against him" is likewise a fundamental right and is made obligatory on the States by the Fourteenth Amendment." ; Pointer vs. Texas, 380 U.S. 400, 13 L. Ed. 2d. 923, P. 926; Douglas vs. Alabama, 380 U.S. 415, 13 L. Ed. 2d. 934, P. 937;

(4); that the United States Fifth Amendment constitutional privilege against self-incrimination is applicable and made binding upon the States by the Fourteenth Amendment; Malloy vs. Hogan, 378 U.S. 1, 12 L. Ed. 2d. 653, P. 656; Murphy vs. Waterfront Commission of New York, 378 U.S. 52, 12 L. Ed. 678, P. 694; (5),that the United States Eighth Amendment constitutional prohibition against "cruel and unusual punishments" is imposed upon the States by the Fourteenth Amendment; Robinson vs. California, 370 U.S. 660, 8 L. Ed. 2d. 758, P. 763; (6), that an accused's United States Sixth Amendment constitutional right to have compulsory process for obtaining witnesses in his favor is incorporated in the Due Process Clause of the Fourteenth Amendment and obligatory upon the States; Washington vs. Texas U.S. , 18 L. Ed. 2d. 1019, P. 1022-1023, 87 S. C. 1920; (7), that the United States Sixth Amendment constitutional right of an accused to a speedy trial is binding upon the States through the Due Process Clause of the Fourteenth Amendment; Kolpfer vs. N.C. 386 U.S. 213, 18 L. Ed. 2d. 1, P. 7-8. For other rights guaranteed by the First Eight Amendments to the Constitution of the United States that are made binding upon the States by the Fourteenth Amendment, we invite the Court's attention to the opinion of Mr. Justice Brennan speaking for a majority of the Court in New York Times vs. Sullivan, 376 U.S. 254, 11 L. Ed. 2d. 686; the concurring opinion of Mr. Justice Goldberg in Pointer vs. Texas, 380 U.S. 400, 13 L. Ed. 2d. 923, P. 930-933; the opinion of Mr. Justice Brennan

on behalf of a majority of the Court in Malloy vs. Hogan, 378 U.S. 1, 12 L. Ed. 2d. 653, P. 657-658, footnote 4, and the dissenting opinion of Mr. Justice Brennan in Cohen vs. Hurley, 366 U.S. 117, 6 L. Ed. 2d. 156, P. 179-183. We here ask this Court to grant this Petition for Writ of Certiorari to determine the heretofore undecided question of whether the United States Sixth Amendment constitutional right to be tried at the place "wherein the crime shall have been committed" is made obligatory upon the States by the Fourteenth Amendment.

The failure of a charge to allege where an offense was committed, or in what county, district or State the offense was committed, or that the offense was committed within the court's jurisdiction, presents inherent subsidiary questions of the constitutional right against being twice placed in jeopardy for the commission of the same offense, and trial by "jury of the State and district wherein the crime shall have been committed," and "to be informed of the nature and cause of the accusation." If the situs of the offense is not alleged, how then can an accused's constitutional right to be tried by a jury, selected from the State or district in which the offense occurred, be exercised? How can an accused plead or prepare a defense to such charge? It may be that he is guilty of the alleged offense in Wisconsin but not guilty of the commission of such alleged

offense in Illinois. In the absence of an allegation of the situs of the offense, how can an accused plead an acquittal or conviction thereof as a bar to subsequent proceedings brought against him for the commission of the same offense? Thus, in the absence of an allegation of the situs of the offense, the constitutional rights of an accused not to be twice placed in jeopardy for the commission of the same offense, to be informed of the nature and cause of the accusation and to trial by jury are grossly infringed upon, circumvented and indeed violated. We pray that this Petition be granted.

Respectfully prayed,

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